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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,007	11/13/2003	Joseph Bruce Tominello		4170

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. BOX 2938  
MINNEAPOLIS, MN 55402

EXAMINER
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WUJCIAK, ALFRED J

ART UNIT	PAPER NUMBER
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3632

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/707,007

Applicant(s)

TOMINELLO ET AL.

Examiner

Alfred Joseph Wujciak III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is the non-final Office Action for the serial number 10/707,007, Container, filed on 11/13/03.

#### ***Drawings***

The drawings are objected to under 37 CFR 1.83(b) because they are incomplete. 37 CFR 1.83(b) reads as follows:

When the invention consists of an improvement on an old machine the drawing must when possible exhibit, in one or more views, the improved portion itself, disconnected from the old structure, and also in another view, so much only of the old structure as will suffice to show the connection of the invention therewith.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Figures 9-10B shows legs being foldable attached to the container (100) which is indefinite because specification explained that the legs are slidable inserted in the container as shown in figure 10A (even though the drawing is insufficient, one side of container shows slots for the legs to slide therein and the other side of container doesn't show slot for the other leg to slide therein), the drawings don't show any support for pivoting the legs such as pin or hinge.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1, lines 3-4, "wherein leg or legs of the second component are moveable within sliding space of the first component is indefinite because the drawings (figure 9-10B) don't show the leg of second component being moveable within sliding space of the first component. The examiner does not understand how this is possible to have leg of second component when being connected to second component and being movable within sliding space of the first component.

Claims 2-12 are rejected as depending on rejected claim 1.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

“Blank” and “legs” in claim 1 clearly show that they are different embodiments. Blank is found in figure 8 which was nonelected by applicant in election/restriction requirement sent out on 9/23/05 and applicant’s response on 10/19/05. Figure 8 does not have support for “legs” as cited in claim 1. Applicant can not have two different embodiments in one independent claim. In this office action, the examiner is examining claims 1-12 based on figures 10-12 and original filed claim 1 (11/13/03).

Claim 2-12 are rejected as depending on rejected claim 1.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent # D448,625 S to Moffett, III et al.

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Moffett, III et al. teaches a stand (figure 1) comprising a main body having first and second components. The components contain panel and at least one leg. The first and second components include two legs and flanges (handle on the cooler in figures 5-6).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al. in view of US Patent # 4,068,779 to Canfield.

Moffett, III et al. teaches the main body but fails to teach the main body comprised of polymeric material. Canfield teaches the plastic main body. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Moffett, III et al.'s main body with plastic as taught by Canfield to reduce weight of the cooler to provide convenience for transporting cooler to a different location.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al. in view of US Patent # 5,931,019 to White et al.

Moffett, III et al. teaches the first and second components but fails to teach the first and second components having finger holes. White et al. teaches finger holes (19). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added

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finger holes to Moffett, III et al.'s first and second components as taught by White et al. to provide grip on the components for lifting cooler off the ground.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al.

Moffett, III et al. teaches the stand having a surface but fails to teach the surface having friction. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added friction to the surface to provide stabilization in the legs while supporting cooler in a vertical position.

Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al. in view of US Patent # 6,471,059 to Purvis.

Moffett, III et al. teaches the main body but fails to teach the main body having indicia. Purvis teaches the indicia (figure 1b). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added indicia to Moffett, III et al.'s body as taught by Purvis to improve appearance of the cooler.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al. in view of US Patent # 3,191,810 to Johnston.

Moffett, III et al. teaches the container but fails to teach the container enclosing a bladder. Johnston teaches the container enclosing a bladder (figure 2). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used bladder in

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Moffett, III et al.'s container as taught by Johnston to provide convenience for removing liquid in bladder from the container.

In regards to claim 9, Moffett, III et al. in view of Johnston teaches the bladder but fails to teach the bladder contains wine. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have replaced the milk with wine in Moffett, III et al. in view of Johnston's bladder to provide designer's preference of liquid to drink.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al. in view of Johnston and in further view of US Patent # 3,880,485 to Schmelzer.

Moffett, III et al. teaches the stand but fails to teach the stand contains beverage receptacles. Schmelzer teaches the beverage receptacles (figure 1). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added beverage receptacles to Moffett, III et al.'s stand as taught by Schmelzer to provide convenience for supporting beverage on the cooler.

### ***Response to Arguments***

Applicant's arguments filed 2/28/07 have been fully considered but they are not persuasive.

On page 1 of applicant's argument stating "One blank embodiment, shown in Fig. 8, is foldable to form each and every feature in the claims under consideration." The applicant is not constant with the election of group I from restriction requirement in the office action filed on 9/23/05 and applicant's response on 10/19/05. The applicant canceled group II that contained figure 8, and then stated claim 1 has support for blank as shown in figure 8, which is indefinite.



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The specification fails to show or explain that the blank from figure 8 comprising leg that is movable within sliding space of the first component. Claim 1 clearly has more than one embodiment in it, which is not permitted. The original claim 1 filed on 11/13/03 did not have the word "blank" in it and the original claim 1 had single embodiment. Since the applicant amended and inserted "blank" in claim 1 on 6/6/06, amended claim 1 has more than one embodiment, which causes 112 problem.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is (571) 272-6827. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6815. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III  
Primary Examiner  
Art Unit 3632

3/16/07

  
A. JOSEPH WUJCIAK III  
PRIMARY EXAMINER  
TECHNOLOGY CENTER